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COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

"A Tradition of Service"

OFFICE CORRESPONDENCE

DATE: August 8, 2005

FILE NO.: #2099405

FROM: JOHNNY G. JURADO, COMMANDER
ERIC B. SMITH, COMMANDER
KENNETH J. BRAZILE, COMMANDER
ROBERT L. BINKLEY, COMMANDER

TO: KARYN MANNIS, CAPTAIN
INTERNAL AFFAIRS BUREAU

SUBJECT: **EXECUTIVE FORCE REVIEW COMMITTEE DISPOSITION:**

DEPUTY ANDREW REYES #[redacted] SAFE STREETS BUREAU

DEPUTY ROBERT HEINS #[redacted] SAFE STREETS BUREAU

DEPUTY MARK MARBACH #[redacted] PALMDALE STATION

DEPUTY DANNY ROBINSON #[redacted] SAFE STREETS BUREAU

DEPUTY PAUL ZARRIS #[redacted] LANCASTER STATION

On August 20, 2003, Deputies Reyes #[redacted] Heins #[redacted] Marbach #[redacted] Robinson #[redacted] and Zarris #[redacted] were assisting in the service of a search warrant at a residence by containing the rear of the location. The suspect jumped out a rear window while holding a gun and pointing it at the deputies. Deputies shot at the suspect as he ran through the rear of the yard and scaled a fence. The suspect was shot again on the other side of the fence and died at the scene. For further details, refer to attached report.

On July 12, 2005, the Executive Force Review Committee convened and conducted a review regarding the facts of this case. The applicable policies that were evaluated by the committee were: MMP §§ 3-01/025.00, Use of Force; 3-01/025.30, Use of Firearms and Deadly Force; 3-01/025.10, Unreasonable Force; and 3-01/050.10, Performance to Standards. Concerning:

MMP § 3-01/025.00, Use of Force, MMP § 3-01/025.30, Use of Firearms and Deadly Force, and MMP § 3-01/025.10, Unreasonable Force, the Committee determined that the force used by Deputies Reyes #[redacted] Heins #[redacted] Marbach #[redacted] Robinson #[redacted] and Zarris #[redacted] was reasonable and necessary and in compliance with Department policy.

MMP § 3-01/050.10, Performance to Standards, the Committee determined that the tactics employed by all personnel in this incident were within Department Policy.

The Committee also directed the Unit Commander to conduct a tactical debriefing of the issues discussed at the meeting with the involved personnel.

Johnny G. Jurado, Commander

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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

STEVE COOLEY • District Attorney
CURT LIVESAY• Chief Deputy District Attorney
CURTIS A. HAZELL • Assistant District Attorney

RICHARD D. DOYLE • Director

April 13, 2004

Captain Raymond Peavy
Los Angeles County Sheriff's Department
Homicide Bureau
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File # 03-0662
L.A.S.D. File # 003-14218-2608-013

Dear Captain Peavy:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed a review of the August 20, 2003, fatal shooting of Edgar Zelaya by Los Angeles County Sheriff's Deputies Robert Heins, Mark Marbach, Andrew Reyes, Danny Robinson and Paul Zarris.

The following analysis is based on reports prepared by the Los Angeles County Sheriff's Department (LASD), submitted to this office by Detective Chris Brackpool, Sheriff's Homicide Bureau, on March 30, 2004. The District Attorney Command Center was notified of this shooting at 8:10 a.m. on August 20, 2003. The District Attorney Response Team, consisting of Deputy District Attorneys Dan Baker and Christina Fleming and District Attorney Senior Investigator [redacted] responded to the scene. They were given a briefing of the circumstances surrounding the shooting and a "walk through" by Sheriff's Lieutenant Joseph Hartshorne. They interviewed eight civilian witnesses in conjunction with LASD investigators.

FACTUAL ANALYSIS

On August 20, 2003, LASD Operation Safe Streets (OSS) detectives were serving an arrest warrant for Edgar Zelaya and a search warrant for Zelaya's home at [redacted] East Avenue R-12 in the City of Palmdale. Zelaya was an admitted member of the "D[own] A[s] F[uck]" criminal street gang and had committed a strong arm robbery about two blocks from his home on July 3,

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2003. Zelaya then used a library card obtained from the victim in that robbery to check out library books. The OSS detectives were being assisted by LASD Gang Enforcement Team Deputies Scott Graham, Robert Gillis, Tim Mulder, Michael Culver, Michael Thompson, Robert Heins, Mark Marbach, Andrew Reyes, Danny Robinson and Paul Zarris. Also present was Los Angeles County Deputy District Attorney Hayden Zacky.

The residence is a two story structure located on the [redacted] corner of R-12 Street and 35th Street. At about 7:30 a.m., the deputies arrived at the location and established a perimeter. Deputies Reyes and Marbach were assigned to the northeast perimeter. Deputies Culver and Heins were assigned to the northwest. Deputies Mulder and Thompson were assigned to the southeast. Deputies Robinson and Zarris were assigned to the southwest. Detectives Maggiora, Costleigh, Gunner, and DeArmas, accompanied by Deputy Graham with the pick and Deputy Gillis with the ram, approached the front of the house. Deputy Morgan manned the rescue car parked to the west. The entry team knocked on the door and announced that they had an arrest warrant for Zelaya and a search warrant for the house. The deputies made this announcement three times, loudly enough that neighbors from several doors away could hear them.

Zelaya did not answer the door. Instead, he looked out of a north-facing upstairs window at the deputies. Sergeant Maggiora shouted at him, "Sheriff's Department, we have a search warrant, open the door!" Zelaya disappeared from view only to reappear when he jumped out of an east-facing second story window onto the top of a chain link enclosure covered with a plywood board. Deputies Reyes and Marbach saw that Zelaya had a handgun in his left hand. Deputy Marbach commanded Zelaya to drop the gun, but Zelaya ran south while pointing the handgun in the direction of Deputies Marbach and Reyes. Deputy Marbach fired two or three rounds and Deputy Reyes fired three rounds at Zelaya. They immediately broadcast that shots had been fired. Deputy Heins heard the gun fire and ran to the northeast of the residence.

Still armed with the handgun, Zelaya ran south through the side yard and jumped over a chain link fence that separated the side yard from the rear yard. As he did this, he turned toward the deputies. Deputy Marbach fired two or three more rounds, Deputy Reyes fired one or two more rounds, and Deputy Robinson fired one or two rounds. Zelaya ran south between a shed and the east fence of the backyard and up an embankment toward the south perimeter wood fence that separated his back yard from the neighbor's back yard. As he ran up the embankment, Deputy Heins fired three rounds. Deputy Zarris, believing that Zelaya was shooting at Deputies Marbach, Reyes and Heins, fired five or six rounds.

When Zelaya reached the top of the embankment, Deputy Zarris saw him turn in a westerly direction. Believing that Zelaya was about to shoot, Deputy Zarris fired five or six more rounds at him. Zelaya climbed to the top of the south perimeter fence. As he did so, he spun in a westerly direction. Deputy Robinson fired three or four rounds at Zelaya, who rolled over the fence and into the backyard of [redacted] Deputy Robinson saw Zelaya raise his left arm with a handgun still visible in his left hand. Deputy Robinson, fearing that Zelaya was

still a threat, fired once at Zelaya. Zelaya threw his gun up and behind him, then fell to the ground. Deputies broke through the wood fence into the backyard of [redacted] Waterman Lane, and handcuffed Zelaya. Paramedics were summoned to the scene and pronounced Zelaya dead.

Investigators found a blue-steel .22 caliber revolver loaded with six rounds in the backyard next door to [redacted] East Avenue R-12 and to the rear of [redacted] Waterman Lane. Two .22 caliber shell casings were found in the backyard of Zelaya's house and gun cleaning patches were found inside the home.

Los Angeles County Deputy Medical Examiner Pedro M. Ortiz-Colom, M.D., performed Zelaya's autopsy on August 23, 2003. Zelaya had bullet wounds in each knee, and in his chest. The chest wound was fatal. The Toxicology Report revealed that Zelaya's blood tested positive for the presence of Amphetamine and Methamphetamine. He also had multiple superficial injuries that Dr. Ortiz-Colom attributed to Zelaya's manner of flight from the deputies.

CONCLUSION

It is well-established law in California that a person may use deadly force in self-defense or the defense of others when that person believes that the use of deadly force is necessary to protect himself or others from great bodily injury or death, and that belief is a reasonable one. People v. Williams (1977) 75 Cal.App.3d 731; People v. Glover (1903) 141 Cal. 233; People v. Ortiz (1923) 63 Cal.App. 662. The United States Supreme Court has held that in evaluating the use of force by police officers, "reasonableness" is to be judged from the perspective of a reasonable officer at the scene, taking into account circumstances surrounding the use of force, including whether the suspect poses an immediate threat to the safety of the officers or others, whether he is actively resisting arrest or attempting to evade arrest by flight and the severity of the crime at issue. In determining the reasonableness of an officer's actions, allowances must be made for the fact that police officers are often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a particular situation. Graham v. Connor (1989) 490 U.S. 386, 396-398.

Deputies went to Zelaya's home to arrest him for strong-armed robbery and search his home. When Zelaya saw the deputies outside of his home, instead of complying with Sergeant Maggiora's instructions, he chose to arm himself and flee, going so far as to jump out of a second story window. He ignored deputies' instructions to stop and refused to discard his gun even after three volleys of gunfire from pursuing deputies.

Under these circumstances, we conclude that the deputies acted lawfully in self-defense and the defense of others. Further, we find that the shooting of Zelaya was a reasonable application of

lethal force under these circumstances. Therefore, we are closing our file and will take no fur action in this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By Daniel W. Baker

DANIEL W. BAKER
Deputy District Attorney
(213) 974-4629

c: Robert Heins, #[redacted]
Mark Marbach, #[redacted]
Andrew Reyes, #[redacted]
Danny Robinson, #[redacted]
Paul Zarris, #[redacted]